Editor's note: Appealed -- stipulated dismissal, Civ.No. 83-3024 (D.D.C. Feb. 21, 1984)

LBS ASSOCIATES, INC.

IBLA 82-500 Decided July 18, 1983

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application U 49085.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

   An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where said application is not accompanied either by the qualification papers required by 43 CFR 3102.2-4 (1981) or by any reference to a serial number indicating where the requisite information can be found. Such omissions cannot be cured after the drawing.

2. Administrative Authority: Estoppel -- Estoppel -- Federal Employees and Officers: Authority to Bind Government

   The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

3. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

   BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6 (1981),

requiring timely disclosure of any agreement with the lease filing service which assisted the applicant, and the applicant asserts, without corroborating evidence, that the required documents were filed timely.

4. Evidence: Presumptions -- Oil and Gas Leases: Rentals

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that documents were enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish filing where there is no evidence of receipt of the missing documents.

5. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Legibility

The regulatory requirement that simultaneously filed oil and gas lease applications be rendered in a manner which reveals the name of the applicant, signatory and their relationship is not satisfied where no designation of authority either appears on the application or can be ascertained by reference to the qualifications file of the filing service listed on the application.

6. Constitutional Law: Generally -- Oil and Gas Leases: Generally -- State Laws

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

APPEARANCES: Craig J. Zicari, Esq., and Kevin S. Cooman, Esq., Rochester, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

LBS Associates (LBS) has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated January 19, 1982, rejecting oil and gas lease application U 49085. LBS' application received first priority in the May 1981 drawing for parcel UT 33.

On October 1, 1981, BLM requested additional information concerning the preparation of the LBS application. BLM specifically requested copies of any identifying attachments, submitted with the LBS application, which would identify the applicant, as well as a list of its authorized signatories. BLM also asked LBS to state if assistance was received or any agreement made concerning the application and requested a copy of any such written agreement.

On October 23, 1981, BLM received from LBS a copy of the partnership agreement, statement of partnership qualifications, certificate of partnership, statements of partnership interest signed by the three LBS partners, and a copy of a subscription agreement between LBS and Eastern Investors Geological Service, Inc. (Eastern), dated May 1, 1981. These documents arrived attached to a copy of the BLM's October 1, 1981, request for evidence but without any cover letter, explanation, or evidence of prior submission.

BLM rejected the lease application for the following reasons. First, the signature on the application did not disclose the relationship between the signer and LBS, as required by 43 CFR 3102.2-4 and 43 CFR 3112.2-1(b). Second, LBS did not submit the information required by 43 CFR 3102.2-4(a) along with its application, nor did it file the additional information required by 43 CFR 3102.2-4(b) within 15 days after filing the application. Third, LBS had not filed a copy of the service agreement with Eastern as required by 43 CFR 3102.2-6. 1/

The regulations to which BLM referred required the following disclosures:

> § 3102.2-4 Associations including partnerships.
>
> (a) An association which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title:

1/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102, effectively eliminating the requirement to file the agent qualifications found in 43 CFR 3102.2-6, as well as the association qualifications found in 43 CFR 3102.2-4. 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). See discussion, infra.

(1) A certified copy of its articles of association or partnership;

(2) A statement that it is authorized to hold oil and gas leases; and

(3) A complete list of all general partners or members together with a statement as to their citizenship and identifying those authorized to act on behalf of the association or partnership in matters relating to Federal oil and gas leasing.

(b) A separate statement from each person owning or controlling more than 10 percent of the association, setting forth citizenship and compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title, shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title.

43 CFR 3102.2-4 (1981).

§ 3102.2-6 Agents.

(a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with Subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: A power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement.

(b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with Subpart 3112 of this title.

43 CFR 3102.2-6 (1981).

LBS contends that it fulfilled these regulations by filing the required documents in a timely manner, but BLM mislaid the documents, supporting its

argument with a statement that a search subsequent to the BLM decision turned up a blank copy of a subscription agreement between LBS and Eastern which in turn led to the discovery of a handwritten list of Eastern's clients' names and addresses. LBS moved to amend the BLM decision to indicate compliance with 43 CFR 3102.2-6.

LBS argues that 43 CFR 3102.2-4 and 43 CFR 3102.2-6 are procedural regulations which frustrate the purpose and intent of the Act, and are, therefore, invalid. It further argues that it should benefit retroactively from the elimination of these requirements on February 26, 1982. See note 1 supra. LBS claims that the second and third drawn applicants have no vested interest in the lease.

LBS also claims that BLM is estopped from rejecting its application for noncompliance with 43 CFR 3102.2-1(c). LBS asserts reliance to its detriment on advice from a BLM employee who advised the notation of "# applied for" on the LBS application.

[1] The provisions of 43 CFR Subpart 3102 in effect at the time of LBS' submittals provided that an oil and gas lease application filed in the name of a partnership in a simultaneous filing was properly rejected where said application was not accompanied either by the qualification papers required by 43 CFR 3102.2-4 (1981) or by any reference to a serial number indicating where the requisite information could be found. A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. 30 U.S.C. § 226(c) (Supp. V 1981); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). A simultaneous oil and gas lease application under 43 CFR Subpart 3112 (as opposed to an over-the-counter lease offer) may not be cured by submission of additional information after the drawing. This would impinge upon the rights of the second drawn applicant. Cheyenne Resources, Inc., 46 IBLA 277, 87 I.D. 110 (1980); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

As this Board noted in Westates Group No. 8, 69 IBLA 186, 190 (1982), 43 CFR 3102.2-1(c) (1981) allowed an applicant to file under a serial reference number those documents required by 43 CFR 3102.2-4 (1981). Thus, a partnership could choose to comply using either 43 CFR 3102.2-4(a) and (b) or 43 CFR 3102.2-1(c). The Board has held that compliance with one or the other of these regulations was required or the application was properly rejected. Century Oil and Gas Corp., 58 IBLA 227 (1981); Stephen A. Pitt, 57 IBLA 365 (1981).

The regulations allowed alternative methods of complying with the agency disclosure requirements. An applicant could have filed the necessary documentation with its application pursuant to 43 CFR 3102.2-6(a). The second alternative would have been compliance with 43 CFR 3102.2-6(b) by filing a copy of the uniform agreement with the application and filing a list of names and addresses of each applicant participating under the agreement within 15 days of the filing of the application. The third alternative permitted an applicant to comply with 43 CFR 3102.2-6(b) by placing evidence

of agency qualifications on file and making reference in future filings, to the serial number assigned to such evidence, rather than submitting the evidence with each filing. Arthur H. Kuether, 65 IBLA 184, 187-88 (1982), and cases cited therein.

In this case, there was no reference to any serial number on the LBS application. Inserting the notation "# applied for" on the LBS card was not sufficient. Until an application for a serial number is approved, no number will be assigned. Therefore, reference to the filing for a serial number cannot be used to fulfill the disclosure requirement. See Westates Group No. 8, supra. Not having been assigned a serial number, unless the necessary documents were submitted with the application (or with the application as supplemented within 15 days under 43 CFR 3102.2-6(b)), appellant's application was properly rejected.

[2] With regard to the LBS attempt to invoke estoppel, assuming, arguendo, that the facts are as stated by appellant, such facts entitle it to no relief on appeal. This Board has stated on numerous occasions that reliance upon erroneous information or opinion of any officer, agent, or employee cannot operate to vest any right not authorized by law. 43 CFR 1810.3(c); Vincent M. D'Amico, 55 IBLA 116 (1981); John Plutt, Jr., 53 IBLA 313, 316 (1981).

Appellant has not alleged facts which would entitle it to the extraordinary remedy of estoppel. In United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970), the Ninth Circuit set forth the elements of estoppel:

> (1) The party to be estopped must know the facts;
>
> (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended;
>
> (3) the latter must be ignorant of the true facts;
>
> (4) he must rely on the former's conduct to his detriment.

Appellant cannot properly allege that it was ignorant of the true facts. In United States v. Georgia-Pacific, supra at 98, the court noted that Georgia-Pacific had reason to rely on the validity of a Public Land Order, given the lack of any indication that it might have issued improperly. In this case, however, the clear wording of the applicable regulation, 43 CFR 3102.2-1(c), in the Federal Register on May 23, 1980, 45 FR 35161, indicates that acceptance of the required evidence of qualifications is indicated by assignment of a serial number. No number had been assigned at the time the application was filed in this case. We note that while failure to comply with 43 CFR 3102.2-1(c) was not a specific ground for BLM's rejection of the LBS application, it could have been.

[3] The BLM October 1, 1981, inquiry was directed to the documents that appellant might have sent with its application. BLM received certain

documents on October 23, 1981, without elaboration or any indication of prior submission. If these documents were submitted for the first time in response to BLM's inquiry, they could not have been timely. 43 CFR 3102.2-4 (1981); 43 CFR 3102.2-6 (1981).

Appellant's assertion that the required documents were submitted to BLM in a timely fashion implies that the documents were either lost or misplaced by BLM. The legal presumption of regularity, albeit rebuttable, supports the official acts of public officers in the proper discharge of their official duties. United States v. Chemical Foundation, 272 U.S. 1 (1926); Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). Absent substantial corroborating evidence to the contrary, it is presumed that the document was not filed, rather than lost or misplaced by BLM. Elizabeth D. Anne, 66 IBLA 126 (1982). Uncorroborated statements to the effect that the required documents were submitted timely are not sufficient to overcome the presumption that such documents were not filed. Mrs. G. C. Fajardo, 69 IBLA 70 (1982).

[4] In a subsequent search by LBS some, but not all, of the documents were found. In situations such as this, this Board has held that uncorroborated statements (even when placed in the form of an affidavit) to the effect that a document was included in a mailing with other documents received by BLM is insufficient to overcome the presumption that the documents were not filed. R. E. Frasch, 69 IBLA 66 (1982); H. S. Rademacher, supra; Lawrence E. Dye, 57 IBLA 360 (1981), appeal filed sub nom. Dye v. Watt, Civ. No. 81-0982 HB (D.N.M. filed Dec. 7, 1981); John Walter Starks, 55 IBLA 266 (1981), appeal filed sub nom. Starks v. Watt, Civ. No. 81-0711 (C.D. Utah dismissed with prejudice, Mar. 3, 1982). Thus, even though the documents necessary to satisfy the requirements of 43 CFR 3102.2-6(b) (1981) were found in the BLM office, appellant has failed to establish compliance with 43 CFR 3102.2-4 (1981). In this case, as in Neil Hirsch, 70 IBLA 307, 310 n.1 (1983), appeal filed sub nom. Hirsch v. Watt, Civ. No. NC 83-0097A (D.N.D. Utah filed May 5, 1983), we find that Diane Kazak, the Eastern employee charged with filing the requisite documents, "can scarcely be deemed a 'disinterested' individual."

Alternatively, appellant argues that since 43 CFR Subpart 3102 was changed on February 26, 1982, the new regulatory scheme should be applied to it retroactively. On February 26, 1982, the Department published interim final regulations revising 43 CFR Subpart 3102 eliminating 43 CFR 3102.2-4 which required the filing of a partnership qualifications statement. 47 FR 8544 (Feb. 26, 1982). Although in some circumstances the Board may apply revised regulations to a pending matter to benefit the affected party (see, e.g., James E. Strong, supra), it is not possible to do so in this case due to the intervening rights of the second- and third-priority applicants. See 30 U.S.C. § 226(c) (Supp. V 1981); Ballard E. Spencer Trust, Inc., supra; Alvin B. Gendelman, 67 IBLA 333 (1982), appeal filed sub nom. Gendelman v. Watt (D.D.C. filed Dec. 30, 1982). See note 1 supra.

[5] In addition, the BLM decision found that this application did not comport with 43 CFR 3112.2-1(b). This requires that "[a]pplications signed

by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship." 43 CFR 3112.2-1(b) (emphasis added).

Considerable patient inspection of the signature on the LBS application does not reveal the identity of the signatory. This Board has affirmed the rejection of oil and gas lease applications where the signature was so illegible that the applicant's identity could not be established. William D. Sexton, 9 IBLA 316 (1973); R. C. Bailey, 7 IBLA 266 (1972), both aff'd sub nom. Burglin v. Morton, 527 F.2d 486 (9th Cir.), cert. denied, 425 U.S. 973 (1976). Where reference to a qualifications file, however, reveals the signatory's identity, the difficulty is relieved and applications can be processed. Liberty Petroleum Corp., 68 IBLA 387 (1982); Hercules (A Partnership), 67 IBLA 151 (1982), appeal filed sub nom. Grooms v. Watt, Civ. No. 82-2179 (D. Colo. filed Dec. 17, 1982). Where no such reference is available and the application was not rendered in a manner which reveals the applicant, signatory and their relationship as required by 43 CFR 3112.2-1(b), the application was correctly rejected. 2/

[6] Appellant also argues that, absent an explicit Federal rule, the law of Florida, where the applicant is located, should be applied. Appellant asserts that Florida allows an authorized partner to sign for all, therefore, the application should be validly signed. As to this contention, we note that

> under the Supremacy Clause of the United States Constitution, Federal law necessarily overrides conflicting state laws with respect to Federal public lands. U.S. Constitution, art. VI, cl. 2; Kleppe v. New Mexico, 426 U.S. 529, 543 (1976); Ventura County v. Gulf Oil Corp., 601 F.2d 1080 (9th Cir. 1979), aff'd 445 U.S. 947 (1980). The Federal laws and regulations are the relevant body of law in this case. Lamar M. Richardson, Jr., 42 IBLA 333 (1979).

LSMJ Exploration Group, 63 IBLA 42, 45 (1982).

The conduct of a fair, sound, and proper simultaneous oil and gas leasing system requires that strict compliance with the regulatory provisions be maintained. Any latitude afforded the first priority applicant impinges upon the rights of the second. Ballard E. Spencer Trust, Inc., supra. Since appellant and its agent did not comply with the requirements set out in 43 CFR 3102.2-4 (1981) and 43 CFR 3112.2-1(b) (1981), the LBS application was properly rejected.

2/ We note that merely because the application form does not provide for the signer's title, the applicant is not excused from rendering the application in a manner that will reveal the name of the signatory and the relationship between the signatory and the applicant. See Liberty Petroleum Corp., 73 IBLA 368, 370 (1983).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge